THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23574 OF 2002

DATED:24.8.2005

Between:

T.Ashok Kumar

S/o.Ramaiah

R/o.A.C.Guards

Hyderabad

…Petitioner

And

The Estate Officer, Secunderabad & Hyderabad

and others

…Respondents

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ORDER:

The petitioner established S.T.D. telephone booth at Niloufer Hospital, second respondent herein, in 1994. He also alleged that when he was constructing S.T.D. booth, third respondent objected and therefore he also obtained permission from the Department of Roads and Buildings and thereafter regularly paying the lease amount to the hospital. Third respondent herein issued proceedings dt.4.8.1999 directing the petitioner to vacate the premises. He assailed the same in W.P.No.17695 of 1999 on the ground that Executive Engineer has no authority to evict him. The Writ Petition was dismissed by this Court giving liberty to petitioner to

make representation to the respondents. Accordingly, he made a representation on 5.9.2000. Subsequently he received proceedings dt.24.11.2000 issued by first respondent, namely Estate Officer, Hyderabad, ordering eviction of the petitioner. The petitioner then filed C.M.A.No.302 of 2000 under A.P.Public Premises (Eviction of Unauthorised Occupants) Act 1968. Said appellate authority by judgment dt.29.8.2002 allowed the C.M.A. and remitted the matter to the Estate Officer for further enquiry. Second respondent issued proceedings on 13.11.2002 directing the petitioner to vacate the premises on the ground that the Government has taken policy decision not to grant lease of Government land. The petitioner further alleges that though no eviction orders are passed by first respondent pursuant to judgment of the Chief Judge, City Civil Court, second respondent now issued eviction order. This order is assailed in the Writ Petition.

Third respondent has filed a counter affidavit. It is stated that originally second respondent granted permission to petitioner for running S.T.D. telephone booth at Niloufer Hospital on condition that whenever the premises is required, petitioner has to vacate the premises without raising any objection. Subsequently, at the request of second respondent, third respondent fixed monthly rent of Rs.50/- per month, and also entered into lease agreement for a period of two years from 11.7.1994 to 10.7.1996, which was subsequently extended upto 10.7.1998. After expiry of lease on 10.7.1998, second respondent issued instructions to authorities to take steps for evicting the petitioner. Accordingly, a letter dt.4.8.1999 was addressed to the Estate Officer for eviction of petitioner in view of policy decision taken by the Government not to grant and extend any lease for government lands. Thereafter, petitioner filed the C.M.A. in which the Chief Judge directed the petitioner to make a representation. The petitioner made such representation. But, in view of Government policy, extension of lease could not be granted. It is also stated by third respondent by reason of the orders of the Government in G.O.Ms.No.135, Finance & Planning (FW.Bg.) Department, dt.20.9.2000 Department of Roads and Buildings handed over the lands and buildings pertaining to Niloufer Hospital to the said Hospital, second respondent herein. Second respondent has not filed any counter affidavit.

Learned counsel for the petitioner, Ms.I.Mammu Vani, vehemently contends that after remand by the Chief Judge, Estate Officer, has not passed any order for eviction of petitioner and therefore the impugned order is unsustainable.

Learned Assistant Government Pleader for Forests, Medical and Health, Sri Gopal, however, opposed the Writ Petition contending that petitioner's lease expired on 10.7.1998 and therefore he cannot be continued beyond 10.7.1998. He also points out that though the petitioner challenged the eviction order in C.M.A.No.302 of 2000, curiously, Niloufer Hospital was not even made party in spite of the fact that the land was transferred to said hospital. He also placed reliance on the decision of the Supreme Court in **Ishar Singh v. District & Sessions Judge.**

It is not denied that when petitioner challenged the eviction orders before this Court in W.P.No.17685 of 1999, this Court dismissed the Writ Petition as under:

> Heard the learned counsel for the parties. Counter has been filed. The case of the petitioner is that lease was granted to him for establishment of STD

> booth. He had established it with huge expenditure but the respondents are trying to evict him from the premises. The case of the respondents is that, lease has expired and the Superintendent of Niloufer hospital has requested the Executive Engineer to get the premises evicted on the expiry of lease.
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> In these circumstances, the writ petition is not maintainable. However, the petitioner shall be at liberty to make representation to the respondents who may consider the same and pass appropriate orders.
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> The Writ Petition is accordingly disposed of.

For the same reasons, in a matter of this nature, Writ Petition is not maintainable. Further, the conduct of the petitioner disentitles him for any relief. In spite of the fact that eviction order was passed in 2000 at the instance of second respondent, curiously, petitioner filed appeal without making Superintendent of the Hospital, as party to the C.M.A. Therefore, at this stage, petitioner cannot be heard that no action is taken on his representation. If no action is taken on the representation, nothing prevented the petitioner to approach the authorities and get his lease extended. Even though the lease expired on 10.7.1998, petitioner continued to be in occupation of S.T.D. booth and even after filing of Writ Petition, he did so for about four years. Therefore, this Court does not find any merit in the Writ Petition. Further, as per present policy of the Government – this is not denied by the petitioner; the Government land cannot be leased out nor extension of the existing leases can be granted. The petitioner's S.T.D. booth lease period expired on 10.7.1998 and therefore he is not entitled for any relief in this Writ Petition.

In **Ashok Kumar v. Union Territory, Chandigarh** dealing with almost similar case the Supreme Court while rejecting the plea held as under.

> Be that as it may, the aforesaid stand of the respondent clearly shows that the earlier policy of allotment of sites to claimants for putting up PCO booths has been given go-by and now from January, 1994 the respondent - Administration is following as uniform policy of putting such sites to public auction. We asked the learned counsel for the appellants to point out as to whether there was any instance in which after 1-1-1994 any of the sites at Chandigarh bus-stand was allowed to anyone without following the procedure of public auction. He fairly states that there was no such instance. Consequently, it cannot be held that the respondent has acted arbitrarily in requiring the appellants to go through the procedure of public auction for being reallotted these disputed sites for continuing their PCO booths or that they had treated them in any hostile or discriminatory manner as compared to the earlier allottees of such sites, namely, M/s. Modern Telephone Communications or Anil Kumar Gupta. It has to be kept in view that both the aforesaid persons were old allottees who were granted allotment for a larger period of time prior to 1-1-1994 when the policy was different and under which even the appellants were allotted plots without undergoing the procedure of public auction. But, after 1-1-1994 as seen earlier there is not even a single instance in which the respondents have departed from the policy of making available the sites at Chandigarh bus-stand only by way of public auction. Consequently, it cannot be said that the respondent is guilty of any discriminatory or hostile treatment qua the appellants.

The Writ Petition is devoid of merits and is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

24.8.2005

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